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SUPERIOR COURT**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CITY ATTORNEY
2010 MAY 18 PM 5:51

CHRISTOPHER LEE DUNN,

Plaintiff,

v.

BURBANK POLICE DEPARTMENT,
CITY OF BURBANK, and DOES 1
Through 100, Inclusive,

Defendants.

Case No. BC 417928

**THE CITY OF BURBANK'S EX PARTE
APPLICATION TO PLACE MSJ
DECLARATIONS AND EXHIBITS
THERE TO UNDER SEAL**

[FILED CONCURRENTLY WITH
DECLARATION OF ROBERT J. TYSON IN
SUPPORT OF EX PARTE APPLICATION;
and [PROPOSED] ORDER THEREON]

Ex Parte Date: May 14, 2010
Time: 8:30 a.m.
Dept. 31


MSJ Date: July 26, 2010
Time: 8:30 a.m.
Dept. 31

1 In anticipation of an *Ex Parte* Application to be made on **Friday, May 14, 2010**,
2 defendant City of Burbank ("City") hereby submits the following memorandum of points and
3 authorities in support of its request for an order that certain evidentiary declarations, and the
4 respective exhibits thereto, concurrently lodged in support of the City's motion for summary
5 judgment be placed under seal. Specifically, the City requests that the declarations of the
6 following individuals and their respective attached exhibits be placed under seal: (1) Tim Stehr;
7 (2) Gerard Misquez; (3) Victor Lewandowski; (4) Mike Webb; and (5) Charles Koffman.

8 The City's *ex parte* application is based upon this application, the attached memorandum
9 of points and authorities, the concurrently filed declaration of Robert J. Tyson and exhibit
10 attached thereto, the concurrently lodged declarations in support of the City's motion for
11 summary judgment and exhibits thereto, the pleadings and records on file with the Court in this
12 matter and such further evidence and argument as the Court may choose to consider.

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14
15 Dated: May 12, 2010

Burke, Williams & Sorensen, LLP
Kristin A. Pelletier
Robert J. Tyson

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18 By: 
19 Robert J. Tyson
20 Attorneys for Defendant
City of Burbank

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MEMORANDUM OF POINTS AND AUTHORITIES

1 The City submits this application to seal certain materials concurrently lodged in support
2 of its motion for summary judgment because they contain confidential information, the release of
3 which would harm the privacy interests of individual officers and unduly hamper the ability of
4 law enforcement to function effectively by impairing, among other things, the use of confidential
5 informants. The documents which the City seeks to have placed under seal consist of the
6 declarations of five individuals, and the exhibits thereto which consist of documents and audio
7 recordings of interviews on compact discs. The information contained in these materials is
8 supportive of the City's motion for summary judgment. Because confidential information is
9 referenced throughout the materials, and it is not practical to redact confidential information
10 from audio recordings, the City requests that the entirety of the declarations and exhibits be
11 placed under seal.
12

13 Good cause exists for sealing these declarations and exhibits because they contain
14 information from confidential peace officer personnel records protected by California *Penal*
15 *Code* § 832.7, information concerning confidential informants protected by California *Evidence*
16 *Code* § 1041(a), and other confidential information concerning law enforcement activities and
17 the contents and functioning of law enforcement databases.
18

19 I. Police Officer Personnel Records, Including Phone Numbers And Addresses, Are
20 Confidential.

21 Police officers have a constitutionally protected right to the privacy of their personnel
22 records. The State Legislature has created a multitude of safeguards, representing our State's
23 commitment to, and acknowledgment of, that privacy right. See *Penal Code* §§ 832.5, 832.7 and
24 832.8; *Evidence Code* §§ 1043 through 1047.) The subject materials are replete with
25 information made confidential by *Penal Code* §832.7(a)¹ which provides that police officer
26

27 ¹ In full, California *Penal Code* Section 832.7(a) states "Peace officer or custodial officer
28 personnel records and records maintained by any state or local agency pursuant to Section 832.5,
or information obtained from these records, are confidential and shall not be disclosed in any
criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the

1 personnel records "are confidential and shall not be disclosed in any criminal or civil proceeding
2 except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code." Under this
3 statute a city is "statutorily precluded from making public disclosure" of such documents. *Davis*
4 *v. City of San Diego*, 106 Cal.App.4th 893, 898 (2003). The information is protected against
5 disclosure unless a stringent procedure is followed under *Evidence Code* §§ 1043 and 1045. *City*
6 *of Santa Cruz v. Superior Court*, 190 Cal.App.3d 1669 (1987). Moreover, this information is
7 protected even if it could be obtained from another source. *Hackett v. Superior Court*, 13
8 Cal.App.4th 96, 100 (1993).

9 "[T]he privilege against disclosure of official police records is held both by the individual
10 officer involved and by the police department." *Davis v. City of Sacramento*, 24 Cal.App.4th
11 393, 401 (1994). In other words, respondent the City of Burbank has an independent right to
12 assert that its officers' personnel records are privileged and confidential, and, as long as the City
13 asserts the privilege, it is immaterial whether or not the officer also does so. *Id.* Accordingly,
14 the personnel records and information derived from them which is set forth in the subject
15 declarations and exhibits are protected from disclosure as a matter of law under *Penal Code* §
16 832.7 because they constitute confidential personnel records of a peace officer.

17
18 II. Information Concerning Police Procedures And The Identity Of Informants Should
19 Remain Confidential.

20 With respect to the identification of confidential informants, *Evidence Code* § 1041(a)
21 provides that "a public entity has a privilege to refuse to disclose the identity" of a confidential
22 informant. Moreover, "[t]he Supreme Courts of both California and the United States long ago
23 recognized that the government held a privilege against disclosing the identity of police
24 informants." *People v. Navarro*, 138 Cal.App.4th 146, 163 (2006). Similarly, the potential
25 adverse consequences of releasing confidential information regarding police procedures and
26

27 Evidence Code. This section shall not apply to investigations or proceedings concerning the
28 conduct of peace officers or custodial officers, or an agency or department that employs those
officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office."

1 informational databases maintained by law enforcement is obvious. Information concerning
2 informants and certain confidential police procedures is relevant to the matters at issue in the
3 City's motion, but the materials containing such information should be placed under seal to
4 maintain confidentiality.

5
6 III. Good Cause Exists For Sealing The Declarations And Their Respective Exhibits.

7 With respect to the sealing of these materials, the City is not required to comply with
8 *California Rules of Court* 2.550-2.551 because *CRC* Rule 2.550(a)(2) states

9 "These rules do not apply to records that are required to be kept
10 confidential by law."

11 *Id.*

12 However, even though not required here the subject declarations and their exhibits comport with
13 the requirements for sealing documents under *CRC* §2.550(d):

14 (1) "There exists an overriding interest that overcomes the right of public access to
15 the record."

16 There is an overriding interest in providing for the confidentiality of police personnel
17 records, confidential information sources uses by police personnel in fighting crime, and related
18 confidential law enforcement information and techniques. Public access to the subject records
19 would adversely affect those goals.

20 (2) "The overriding interest supports sealing the record."

21 The overriding interest in facilitating effective law enforcement, protecting the privacy of
22 police officers and the confidentiality of sources supports sealing the subject documents for the
23 reasons described above.

24 (3) "A substantial probability exists that the overriding interest will be prejudiced if
25 the interest is not sealed."

26 If the record is not sealed, a substantial probability exists that the interests described in
27 (1) and (2) above will be prejudiced in that private information of certain officers will be
28 revealed, the identities of confidential informants disclosed, and confidential police procedures
and techniques made public.

1 (4) "The proposed sealing is narrowly tailored."

2 The proposed sealing cannot be more narrowly tailored because portions of the
3 confidential information exist throughout the declarations and their respective exhibits, and it is
4 not practical to redact the confidential information from these materials or from the submitted
5 audio recordings. In essence, the declarations and attached exhibits are replete with confidential
6 information and sealing them in their entirety is the only practical solution and is therefore
7 justified.

8 (5) "No less restrictive means exist to achieve the overriding interest."

9 There are no less restrictive means to achieve the overriding interest for the reasons set
10 forth at item (4) above.

11
12 IV. Conclusion.

13 For the reasons set forth above, the City respectfully requests that the following
14 documents be placed under seal: (1) the declaration of Tim Stehr and the exhibits thereto; (2) the
15 declaration of Gerard Misquez and the exhibits thereto; (3) the declaration of Victor
16 Lewandowski and the exhibits thereto; (4) the declaration of Mike Webb and the exhibits
17 thereto; and (5) the declaration of Charles Koffman and the exhibits thereto.

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19
20 Dated: May 12, 2010

Burke, Williams & Sorensen, LLP
Kristin A. Pelletier
Robert J. Tyson

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23 By: 

24 Robert J. Tyson
25 Attorneys for Defendant
26 City of Burbank
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**THE CITY OF BURBANK'S EX PARTE APPLICATION TO
PLACE MSJ DECLARATIONS AND EXHIBITS THERETO
UNDER SEAL**

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Executed on May 12, 2010, at Los Angeles, California.

PROOF OF SERVICE